

SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY

7-1.01	Laws to be Observed
7-1.01A	Labor Code Requirements
7-1.01A(1)	Hours of Labor
7-1.01A(2)	Prevailing Wage
7-1.01A(2)(a)	Travel and Subsistence Payments
7-1.01A(3)	Payroll Records
7-1.01A(4)	Labor Nondiscrimination
7-1.01A(5)	Apprentices
7-1.01A(6)	Worker's Compensation
7-1.01A(7)	Suits to Recover Penalties and Forfeitures
7-1.01B	Blank
7-1.01C	Contractor's Licensing Laws
7-1.01D	Vehicle Code
7-1.01E	Trench Safety
7-1.01F	Air Pollution Control
7-1.01G	Water Pollution
7-1.01H	Use of Pesticides
7-1.01I	Sound Control Requirements
7-1.01J	Assignment of Antitrust Actions
7-1.01K	Time for Giving of Notice
7-1.01L	Compliance with the Underground Notification Systems
7-1.01M	Prohibition of Gifts
7-1.02	Weight Limitations
7-1.03	Payment of Taxes
7-1.04	Permits and Licenses
7-1.05	Patents
7-1.06	Safety and Health Provisions
7-1.07	Blank
7-1.08	Public Convenience
7-1.09	Public Safety
7-1.10	Use of Explosives
7-1.11	Preservation of Property
7-1.12	Responsibility for Damage
7-1.121	Protection of Contractor's Work and Property
7-1.122	Insurance Requirements
7-1.122A	Insurance During Termination and/or Suspension
7-1.125	Legal Actions Against the City
7-1.13	Disposal of Material Outside the Project Limits
7-1.14	Cooperation
7-1.145	Mutual Responsibility of Contractors
7-1.15	Relief from Maintenance and Responsibility
7-1.16	Contractor's Responsibility for the Work and Materials
7-1.165	Damage by Storm, Flood, Tidal Wave or Earthquake
7-1.166	Substantial Completion
7-1.17	Acceptance of Contract

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7-1.18	Property Rights in Materials
7-1.19	Rights in Land and Improvements
7-1.20	Repair of Equipment
7-1.21	Material Plants
7-1.22	Provisions of Law and Venue
7-1.23	Final Guarantee
7-1.24	Legal Address of Contractor
7-1.25	Material Storage
7-1.26	Waiver by the City
7-1.27	Archeological and Paleontological Rights
7-1.28	Emergencies
7-1.29	Integration Clause

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 Laws to be Observed. - The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall to the fullest extent allowed by law protect, defend and indemnify the City of San Jose, and all officers, employees, and agents thereof connected with the work, including but not limited to the Engineer, against any claim or liability arising from any work performed under the contract or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or their employees, subcontractors or suppliers at any tier unless such claim or liability arises due to the sole negligence or willful misconduct of the City, its officers, employees or agents. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

7-1.01A Labor Code Requirements. - Attention is directed to the following requirements of the Labor Code:

7-1.01A(1) Hours of Labor. - Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to the State, \$50 for each worker employed in the execution of the contract by the Contractor or any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay, as provided in said Section 1815.

7-1.01A(2) Prevailing Wage. - The Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to said Section 1775 the Contractor shall forfeit to the State a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or a Contractor's willful failure

to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor had knowledge of his or her obligations under the Labor Code. In addition to said penalty and pursuant to said Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned. These wage rates are set forth in the Department of Transportation publication entitled General Prevailing Wage Rates, which is a part of the contract.

The wage rates determined by the Director of Industrial Relations and published in the Department of Transportation publication entitled General Prevailing Wage Rates refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published rate of wage shall be in effect for the life of the contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the Department of Industrial Relations, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates set forth in the Department of Transportation publication entitled General Prevailing Wage Rates, which is a part of the contract shall be posted by the Contractor at a prominent place at the site of the work.

All questions regarding prevailing wages shall be directed to the City's Office of Affirmative Action/Contract Compliance.

The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining their bid, and will not under any circumstances be considered as the basis of a claim against the City on the contract.

7-1.01A(2) (a) Travel and Subsistence Payments. - Attention is directed to the requirements of Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each worker, needed to execute the work, in accordance with the requirements in said Section 1773.8.

7-1.01A(3) Payroll Records. - The Contractor's attention is directed to the provisions of Labor Code Section 1776, a portion of which is quoted below. Regulations implementing said Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Administrative Code. The Contractor shall be responsible for compliance by subcontractors.

- "(a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- "(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- "(c) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that

- requested the records within 10 days after receipt of a written request.
- "(d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.
- "(e) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.
- "(f) In the event of noncompliance with the requirements of this section, the contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. Should noncompliance still be evident after the 10-day period, the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit 25 dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due."

The penalties specified in subdivision (f) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

A copy of all payrolls shall be submitted weekly to the Engineer. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which the employee's name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or their agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the City or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the City will retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next

monthly estimate, except that such retention shall not exceed \$10,000 nor be less than \$1,000. Retention for failure to submit satisfactory payrolls shall be additional to all other retention provided for in the contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

The Contractor and each subcontractor shall preserve their payroll records for a period of 4 years from the date of completion of the contract.

7-1.01A(4) Labor Nondiscrimination. - Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

Attention is hereby directed to those provisions of Title II, Chapter 13, Parts 1, 2, and 3 of the San Jose Municipal Code (relating to equal employment opportunity, nondiscrimination in employment, and requirements for affirmative action to insure equal employment opportunity, including requirements for submittal of written affirmative action programs and pre-award approvals of such programs in certain contracts), and to the Affirmative Action Guidelines adopted by resolution of the City Council. Contractor agrees to comply with all of such provisions and guidelines applicable to this contract. The provisions of said Chapter 13 of Title II of the San Jose Municipal Code, said resolutions and said Affirmative Action Guidelines are set forth in full in the special provisions of the specifications.

7-1.01A(5) Apprentices. - Attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. To insure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, State of California prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with the Contractor.

It is City policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

7-1.01A(6) Workers' Compensation. - Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in accordance with the provisions of Section 3700 of the Labor Code.

Prior to the commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against

liability for workers; compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Said certification is included in the contract, and signature and return of the contract as provided in Section 3-1.03, "Execution of Contract," shall constitute signing and filing of the said certificate.

Before beginning the work, the Contractor shall furnish to the City satisfactory proof that he has taken out, for the period covered by the work under this contract, full compensation insurance for all persons whom the Contractor may employ directly or through subcontractors, in carrying out the work contemplated under this contract, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by this contract.

If the Contractor or subcontractor fail to maintain such insurance, the City may take out compensation insurance which the City might be liable to pay under the provisions of the Act by reason of any employee of the Contractor or subcontractors being injured or killed, and deduct and retain the amount of the premium for such insurance from any sums due to the Contractor.

If any injury occurs to any employee of the Contractor for which the employees, or his dependents in the event of this death, is entitled to compensation from the City under the provisions of said Act, or for which compensation is claimed from the City, the City may retain from the sums due the Contractor under this contract an amount sufficient to cover such compensation, as fixed by said Act, until such compensation is paid, or until it is determined that no compensation is due, and if the City is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid.

7-1.01A(7) Suits to Recover Penalties and Forfeitures. - Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on such laws.

Said sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for such penalties or forfeitures, and that such suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the contract and the formal acceptance of the job.

Submission of a claim under Section 9-1.07B, "Final Payment and Claims," for the amounts withheld from payment for such penalties and forfeitures is not a prerequisite for such suits and such claims will not be considered.

7-1.01B (Blank)

7-1.01C Contractor's Licensing Laws. - Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.

All bidders and contractors shall be licensed in accordance with the laws of this State at the time of bid in the classification set forth in these contract

documents and any bidder or contractor not so licensed is subject to the penalties imposed by such laws and rejection of their bid.

In all City projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed at the time of bid in accordance with the laws of this state. At the time a federally funded contract is awarded, the Contractor shall be properly licensed in accordance with the laws of the State of California.

The first payment for work or material under any contract shall not be made by the City unless and until the Registrar of Contractors certifies to the City that the records of the Contractors State License Board indicate that the Contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. Failure of the bidder to timely obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 3-1.04 "Failure to Execute Contract" and shall result in the forfeiture of the security of the bidder.

7-1.01D Vehicle Code. - Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within such areas as are within the limits of the project and are open to public traffic, the following requirements of the Vehicle Code will apply. The lighting requirements in Section 25803; the brake requirements in Chapter 3, Division 12; the splash apron requirements in Section 27600, and, when operated on completed or existing treated base, surfacing, pavement or structures, except as otherwise provided in Section 7-1.02 "Weight Limitations," the weight limitation requirements contained in Division 15.

Attention is directed to the statement in said Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of their equipment and the protection of the public from injury and damage from such equipment.

Any other requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code which the City, pursuant to the authority contained in Vehicle Code Section 591, will require compliance with, will be set forth in the special provisions.

7-1.01E Trench Safety. - Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

7-1.01F Air Pollution Control. - The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances and statutes.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the project right of way.

7-1.01G Water Pollution. - The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule their operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters.

Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways, and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Engineer.

In order to provide effective and continuous control of water pollution, it may be necessary for the Contractor to perform the contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of their operations. The Contractor shall, coordinate water pollution control work with all other work done on the contract.

Before starting any work on the project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the project. Such program shall show the schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of their operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until such program has been accepted.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise their operations and their water pollution control program. Such directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on said items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.

The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program in not more than 5 working days.

The City will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.

The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Unless otherwise approved by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 750,000 square feet for each separate location, operation, or spread of equipment before either temporary or permanent erosion control measures are accomplished.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the contract nor in the provisions in this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.

The requirements of this section shall apply to all work performed under the contract and to all non-commercially operated borrow or disposal sites used for the project.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and streams, and during construction of such barriers, muddying of streams shall be held to a minimum.
2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.
3. Should the Contractor's operations require transportation of materials across live streams, such operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of such live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.
5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.
6. Portland cement or fresh Portland cement concrete shall not be allowed to enter flowing water of streams.
7. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.
8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.

9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct their operations so as to allow free passage of such migratory fish.

Compliance with the requirements of this section shall in no way relieve the Contractor from their responsibility to comply with the other provisions of the contract, in particular the Contractor's responsibility for damage and for preservation of property.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefor.

7-1.01H Use of Pesticides. - The Contractor shall comply with all rules and regulations of the State of California, Department of Food and Agriculture, the State of California, Department of Health, the State of California, Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as plant regulator, defoliant or desiccant shall be considered a pesticide.

7-1.01I Sound Control Requirements. - The Contractor shall minimize noise and comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

7-1.01J Assignment of Antitrust Actions. - The Contractor's attention is directed to the following provisions of Government Code Sections 4551, 4553, and 4554 which shall be applicable to the Contractor and subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

7-1.01K Time for Giving of Notice. - The terms of Code of Civil Procedure Section 1013 shall not apply to any notices given by City under this contract.

7-1.01L Compliance with the Underground Notification System. - To the extent they apply to the Contractor's work, the Contractor shall comply with the requirements of Government Code Sections 4216 through 4216.9, inclusive.

7-1.01M Prohibition of Gifts. - Pursuant to Chapter 10.36, Part 5, "Prohibition of Gifts and Certain Contributions" of the City Municipal Code, the Contractor shall be familiar with the City's prohibition against acceptance of any gift by a City officer or designated employee. Said prohibition is found in Chapter 10.36 of the San Jose Municipal Code.

The Contractor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 10.36 shall constitute a material breach of this contract by Contractor. In addition to any other remedies City may have in law or equity, City may terminate for cause this contract for such breach as provided elsewhere in these General Conditions.

7-1.02 Weight Limitations. - Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not such area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement

concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In such locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor at the Contractor's expense, as directed by the Engineer.

Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor at the Contractor's expense shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by such operations, the Contractor will be permitted to:

- (1) Make transverse crossings of such portions of an existing public road or street as are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (2) Make transverse crossings of treated bases, surfacing, or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (3) Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the weight limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
 - (a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles, (2) 48,000 pounds for tandem axles, nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
 - (b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earth movers shall not exceed that shown in the following table.

**ALLOWABLE CONSTRUCTION LOADING ON BRIDGES
FOR 2 AND 3 AXLE EARTH MOVERS**

Spacing of Bridge Girders (center to center in feet)	Maximum Axle Loading (in pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10 and over	40,000

Minimum axle spacing:

For 3-axle earth movers

Axles 1 to 2 = 8 feet

Axles 2 to 3 = 20 feet

For 2-axle earth movers

Axles 1 to 2 = 20 feet

- (4) Move equipment within the limits of the project over completed or existing base, surfacing, pavement, and structures, whether or not open to the public, in accordance with the limitations and conditions established by the Engineer.

Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If such conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the contract, in order to facilitate their own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost

and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations and payment to the City.

7-1.03 Payment of Taxes. - The contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the contract.

7-1.04 Permits and Licenses. - The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work in sufficient time to prevent delays to the work.

The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the contract. The Contractor shall comply with the provisions of said statutes in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the City has obtained permits, licenses or other authorizations, applicable to the work, the Contractor shall comply with the provisions of said permits, licenses and other authorizations.

7-1.05 Patents. - The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and agrees to indemnify and hold harmless the City, its employees, duly authorized agents and duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes.

7-1.06 Safety and Health Provisions. - The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the Federal Government, State of California, County of Santa Clara and the City of San Jose or any other government agency of competent Jurisdiction.

All working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various items of work involved and no separate payment will be made therefor.

7-1.07 (Blank)

7-1.08 Public Convenience. - This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The requirements in said Section 7-1.09 are in addition to the requirements of this Section 7-1.08 and the Contractor will not be relieved of any responsibilities as set forth in said Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of this Section 7-1.08 and said Section 7-1.09.

In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, such traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Section 12, "Construction Area Traffic Control Devices," furnishing, installing and removing covers will be paid for as extra work as provided in Section 4-1.03D.

Excavation and the construction of embankments shall be conducted in such manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations, and if ordered by the Engineer roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the

other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.

After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic prior to commencing subgrade operations will be paid for as extra work as provided in Section 4-1.03D. After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2 lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress.

Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic thereon during subgrade preparation and paving operations will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the work under one-way controls, and the cost thereof will be paid for as extra work as provided in Section 4-1.03D, except that the cost of flaggers furnished for this purpose will be paid for as provided in Section 12-2.02, "Flagging Costs." At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with such one-way controls.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades, and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing such signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as extra work as provided in Section 4-1.03D.

The cost of furnishing flaggers for the sole convenience and direction of public traffic will be paid for as provided in Section 12-2.02, "Flagging Costs."

The Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by

reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover such cost.

Whenever a section of surfacing, pavement, or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case, the Contractor will not be allowed any compensation due to any delay, hindrance, or inconvenience to the Contractor's operations caused by such public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of such use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.

Except as otherwise provided in this Section 7-1.08 or in the special provisions, full compensation for conforming to the requirements in this Section 7-1.08 and in the special provisions shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

7-1.09 Public Safety. - It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to Section 7-1.12, "Responsibility for Damage."

Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of said Section 7-1.08 and this Section 7-1.09.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City, furnish, erect and maintain such fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

Such fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered and payment therefor will be made as provided in Section 12-2.02, "Flagging Costs."

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Caltrans Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor at the Contractor's expense shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of any responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workers and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Lanes, ramps, and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Construction Area Traffic Control Devices," and as provided in the special provisions.

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in accordance with the provisions in Caltrans Section 86-6.11, "Falsework Lighting."

The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever such falsework or girders will reduce clearances available to public traffic.

Where the height of vehicular openings through falsework is less than 15 feet, a W34B "Vertical Clearance" sign shall be provided above each opening facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that said signs are clearly visible. The minimum height of the letters and numbers shall be 6 inches and 10 inches, respectively.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the contract for such facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for such temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for review pursuant to Section 5-1.02, "Plans and Working Drawings." Such submittal shall designate thereon the standard design criteria or codes used. Installation of such temporary facilities shall not start until the Engineer has reviewed the drawings.

Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work as provided in Section 7-1.08, "Public Convenience," or by contract item as provided in Section 12, "Construction Area Traffic Control Devices," shall in nowise relieve the Contractor from any responsibility as provided in this Section 7-1.09.

Except as otherwise provided in this Section 7-1.09 or in the special provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 and in the special provisions shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

Should the Contractor be negligent or fail to furnish and/or maintaining warning and protective facilities as required herein, the City may furnish and/or maintain such facilities and charge Contractor therefor by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by City.

In the event the Contractor does not provide such flaggers and guards as are required by this section, the Director may request that the San Jose Police Department provide for public safety and that the costs related thereto shall be deducted from any periodic progress payments due the Contractor.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the right-of-way open for use by public traffic.

7-1.10 Use of Explosives. - The use of explosives is expressly prohibited unless specifically provided for in the special provisions.

7-1.11 Preservation of Property. - Attention is directed to Section 7-1.12, "Responsibility for Damage," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed.

Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities, and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the work being performed under the contract. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any damaged highway facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of any responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

7-1.12 Responsibility for Damage. - The City and all agents, officers and employees thereof including but not limited to the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public, or for damage to property from any cause which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

The Contractor shall protect, indemnify, defend and hold harmless the City and all agents, officers and employees thereof including but not limited to the Engineer, from all claims, suits or actions of every name, kind and description including attorney's fees, brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of a contract, except as otherwise provided by statute the State of California. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its agents, officers or employees.

It is the intent of the parties that the Contractor will indemnify and hold harmless the City, its agents, officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the City, the Contractor, the subcontractor or subcontractor at any tier or employee of any of these, other than the sole negligence or willful conduct of the City, its agents, officers and employees.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by the City may be retained by the City until disposition has been made of such suits or claims for damages as aforesaid.

The retention of money due the Contractor shall be subject to the following:

1. The City will give the Contractor 30 days notice of its intention to retain funds from any partial payment which

- may become due to the Contractor prior to acceptance of the contract. Retention of funds from any payment made after acceptance of the contract may be made without such prior notice to the Contractor.
2. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments."
 3. If the City has retained funds and it is subsequently determined that the City is not entitled to be indemnified and hold harmless by the Contractor in connection with the matter for which such retention was made, the City shall pay interest on the amount retained at the same rate as that received by the City on such funds for the period of such retention.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property. Contractor shall indemnify and hold harmless any county, city or district, their officers and employees connected with the work, within the limits of which county, city or district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the City and all officers and employees thereof connected with the work.

Nothing in this contract is intended to make the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

7-1.121 Protection of Contractor's Work and Property. - The Contractor shall protect their work, supplies and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever which is under the Contractor's control, until the completion and acceptance of the work. Neither the City nor any of its agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the work of the Contractor.

7-1.122 Insurance Requirements. - Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property as set forth in the Special Provisions which may arise from or in connection with the performance of the work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors, including work performed pursuant to Section 8-1.05, "Temporary Suspension of Work." The cost of such insurance shall be included in the Contractor's bid.

7-1.122A Insurance During Termination and/or Suspension. - If the City elects to suspend the contract work as provided for in these Specifications, it shall be the Contractor's obligation to keep all insurance policies required under the contract documents in place and effective during the period of such suspension.

If the City should elect to terminate the contract, it shall be the Contractor's obligation to keep all insurance required under the contract documents in place and in effect until the acceptance of the project by the Engineer.

7-1.125 Legal Actions Against the City. - In the event litigation is brought against the City concerning compliance by the City with State, Federal, regional, or local laws, ordinances, rules or regulations applicable to the work, the provisions of this Section 7-1.125 shall apply.

- (A) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the contract is terminated as hereinafter provided.
- (B) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (C) If the final judgment in an action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (D) If the contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."
- (E) If any legal action is filed involving the project, the City may, in its sole discretion, elect to terminate the contract for convenience or suspend the contract, as provided elsewhere in these Specifications. This right to terminate and/or suspend the contract work shall include but not be limited to an action brought under the California Environmental Quality Act (CEQA).

7-1.13 Disposal of Material Outside the Project Limits. - If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City, or, if material is to be disposed of and the City has not made arrangements for disposal of such material, the Contractor shall make arrangements for disposing of materials outside the project limits and the Contractor shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the project limits, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained said permits, licenses and clearances.

When any material is to be disposed of outside the project right of way, and the City has not made arrangements for disposal of such material, the

Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer said authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on said property, and before any material is disposed of on said property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in said authorization.

When material is disposed of as above provided and the disposal location is visible from a highway, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

Where the City has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, such arrangements are made solely for the purpose of providing all bidders an equal opportunity to dispose of said materials on such property. Bidders or Contractors may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. If the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the contract and it is expressly understood and agreed that the City assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on such property.

In those instances in which the Department has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," said compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 7-1.13 concerning said documents.

The bidder or Contractor is cautioned to make such independent investigation and examination as they deem necessary to satisfy themselves as to the quantity and types of materials which may be disposed of on such property and the rights, duties and obligations acquired or undertaken under such arrangement with the property owner.

Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on such property unless the Contractor has first either:

- (1) Executed a document that will guarantee to hold such owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City and the property owner. Said document will be prepared by the Engineer for execution by the Contractor, or
- (2) Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the

owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

If the Contractor elects to dispose of material under (1), the use of such site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City and the Contractor shall pay such charges as are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for such material disposed of.

If the Contractor elects to dispose of material under (2), the Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover such charges.

Before acceptance of the contract, the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either - (1), the arrangement between the City and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section 7-1.13, including all costs of hauling, shall be considered as included in the price paid for the contract item of work involving such materials and no additional compensation will be allowed therefor.

7-1.14 Cooperation. - Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When 2 or more contractors are employed on related or adjacent work, or obtain materials from the same material source, as provided in Section 6-2.02, "Possible Local Material Sources," or Section 6-2.03 "Mandatory Local Material Sources," each contractor shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish the work within the time specified for completion. The Contractor shall conduct, adjust, correct and coordinate their work with the work of others so that no discrepancies shall result in the whole work and shall defend, indemnify and hold the City harmless against any claims arising therefrom. The Contractor, including sub-contractors at any tier, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with the Contractor's own operations. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of

progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's work. If the work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall on that account have no claim against the City other than for an extension of time.

7-1.145 Mutual Responsibility of Contractors. - If the Contractor or any of their subcontractors or employees cause loss or damage to any other contractor, and if such other contractor makes a claim against the City, its employees or agents, on account of any loss so sustained, the City shall notify the Contractor, who shall defend, indemnify and save harmless the City, its employees and agents against any such claim, expense or judgement arising therefrom.

7-1.15 Relief From Maintenance and Responsibility. - Upon the request of the Contractor, the Engineer may relieve the Contractor of the duty of maintaining and protecting certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the contract and to the satisfaction of the Engineer and of which City has taken occupancy or use, and thereafter except with the Engineer's consent, the Contractor will not be required to do further work thereon. In addition, such action by the Engineer will relieve the Contractor of responsibility for injury or damage to said completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence. Portions of the work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include but are not limited to the following:

- (1) The completion of one-quarter mile of roadway or one-quarter mile of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting and any required traffic control and access facilities.
- (2) A bridge or other structure of major importance.
- (3) A complete unit of a traffic control signal system or of lighting system.
- (4) Facilities constructed for other agencies.
- (5) Storm or sanitary sewer facilities as designated by the Engineer.

However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good defective work or materials found at any time before or after the formal written acceptance of the entire contract by the Engineer.

If the Contractor is relieved of maintenance and responsibility of a portion of the work performed under this contract and the City takes occupancy or use of that portion of the work, the Contractor hereby agrees to provide reasonable access to the City's maintenance forces to properly maintain those areas occupied by the City.

7-1.16 Contractor's Responsibility for the Work and Materials. - Until the acceptance of the contract, the Contractor shall have the charge and care of the work and of the materials to be used therein (including materials for which the Contractor has received partial payment as provided in Section 9-1.06, "Partial Payments," or materials which have been furnished by the City and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work, except as provided in Sections 7-1.08, "Public Convenience," and 7-1.15, "Relief From Maintenance and Responsibility." The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," and in Caltrans Section 19-2.04, "Slides and Slipouts," and except for such injuries, losses, or damages as are directly and proximately caused by acts of the Federal, State, regional, or local Government or the public enemy. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the work area and erect such temporary structures as are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of any responsibility for the work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been furnished by the City. Such storage by the Contractor shall be on behalf of the City and the City shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

The City reserves the right to use or occupy any portion or all of the work prior to completion. Upon occupying or commencing use of any such portion or all of the work prior to completion, the Contractor shall not be relieved of any duty for maintaining and protecting said work and the Contractor shall be required thereafter to complete said work. The Contractor shall be fully responsible for coordinating with the City for the completion of such work such that said work will cause the least interference with the City's use and/or occupancy.

7-1.165 Damage by Storm, Flood, Tidal Wave or Earthquake. - Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, tidal wave or earthquake which constitutes an "Occurrence," as hereinafter defined, the provisions of this Section 7-1.165 shall be applicable and the Contractor may apply in writing to the Engineer for the City to pay or participate in the cost of repairing damage to the work from such cause or, in lieu thereof, and at the sole discretion of the City, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

- A. Occurrence. "Occurrence" shall include tidal waves, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and storms and floods as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which such proclamation is applicable or, which were,

in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.

- B. Application by Contractor. The Contractor's written request for the City to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.
- C. Protecting the Work from Damage. Nothing in this section shall be construed to relieve the Contractor of any responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Plans and Specifications, take reasonable and adequate measures to protect the work or exercise sound engineering and construction practices in the conduct of the work, and such repair costs shall be excluded from consideration under the provisions of this section.
- D. Repair Work. Repair of damaged work under the provisions of this section shall be pursuant to a contract change order issued hereunder and specifying the repair work to be performed on the damaged facility. Such repair work shall consist of restoring the in-place construction (for the purposes of this section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which such work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of said repair work.

The City reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if such changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for such increased costs in accordance with Subsection E and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor under Subsection F.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and

equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of any responsibility under Section 7-1.12, "Responsibility for Damage." The provisions of this section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Relief From Maintenance and Responsibility," or to the removal of slides and slipouts or the repair and restoration of damage to the work resulting from slides and slipouts pursuant to Caltrans Section 19-2.04, "Slides and Slipouts."

- E. **Determination of Costs.** Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in accordance with the provisions in Section 9-1.03, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tidal wave or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and specifications shall be borne solely by the Contractor, and such costs shall not be considered in determining the cost of repair under this Subsection E.
- F. **Payment for Repair Work.** When the Occurrence that caused the damage was a tidal wave or earthquake, the City will pay the cost of repair determined as provided in Subsection E, that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.

When the Occurrence that caused the damage was a storm or flood, the City will participate in the cost of the repair determined as provided in Subsection E in accordance with the following:

1. On projects for which the amount of the Contractor's bid for bid comparison purposes is \$2,000,000 or less, the City will pay 90 percent of the cost of repair that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.
2. On projects for which the Contractor's bid for bid comparison purposes is greater than \$2,000,000, the City will pay 90 percent of the cost of repair that exceeds \$100,000.

- G. **Termination of Contract.** If the City elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

7-1.166 Substantial Completion. - When the Contractor considers the work or a designated portion thereof substantially complete as defined in Section 1-1.425, "Substantial Completion," the Engineer shall prepare for the Contractor a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the contract documents. When the Engineer determines that the work or designated portion thereof is substantially complete, the Engineer will then prepare a Certificate of Substantial Completion which shall state the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the work and insurance. The Certificate of Substantial Completion of the work shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Contractor shall obtain and submit to the City, prior to the date of Substantial Completion, all necessary permits for occupancy or the date of Substantial Completion shall be deemed postponed until the City receives these permits. If desired by the City, portions of the work, as completed, may be placed in service. The Contractor shall give proper access to the work for this purpose. Such use and operation shall not constitute an acceptance of the work or that portion placed in service. Contractor shall be liable for defects due to faulty construction.

Upon issuance of the Certificate of Substantial Completion of the work or designated portion thereof, and upon application by the Contractor, and certification by the Engineer, the City shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof as provided in the contract.

Liquidated damages shall continue to accrue until the filing of the Notice of Acceptance, unless otherwise stated in the Certificate of Substantial Completion. Warranties shall begin to run upon filing of the Notice of Acceptance unless otherwise stated in the Certificate of Substantial Completion.

7-1.17 Acceptance of Contract. - When the Engineer has made the final inspection as provided in Section 5-1.13, "Final Inspection," and determines that the contract work has been completed in all respects and in its entirety in accordance with the plans and specifications, the Engineer will formally accept the contract, and immediately upon and after such acceptance by the Engineer, and recordation of the Notice of Completion and Acceptance by the County Recorder's Office, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, and except for warranty and punch list work, the Contractor will not be required to perform any further work thereon, and the Contractor shall be relieved of responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the Engineer.

7-1.18 Property Rights in Materials. - Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been installed for their intended use. All such materials shall become the property of the City upon being so attached or affixed.

7-1.19 Rights in Land and Improvements. - Nothing in these specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of such land, structure, or building.

The Contractor shall not occupy City-owned property outside the right of way as shown on the plans or outside the expressly designated areas in the contract documents unless the Contractor enters into a rental agreement with the City. The agreement will be based on the fair rental values.

7-1.20 Repair of Equipment. - The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the contract, shall be subject to all the requirements relating to labor set forth in these specifications and in the special provisions.

7-1.21 Material Plants. - The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the contract or on contracts under the supervision of the City shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in these specifications and in the special provisions.

7-1.22 Provisions of Law and Venue. - It is specifically provided that this contract is to be interpreted pursuant to California Law and subject to all the provisions of law regulating and controlling the performance of work for the City, and that the rules of law shall prevail over any provision contained in any of the contract documents which may be in conflict or inconsistent therewith.

Each and every provision of law and clause required by law to be inserted in these contract documents shall be deemed to be inserted herein and the contract documents shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provisions is not inserted, or is not correctly inserted, then upon application of either party, the contract documents shall forthwith be physically amended to make such insertion or correction at no additional cost to City.

The parties to this Contract hereby expressly agree that any contrary provisions of this contract notwithstanding, any action to interpret the terms of the Contract or resolve any dispute arising under this Contract by the Contractor, subcontractors at any tier, and material suppliers at any tier, shall be filed exclusively in the State Court of Santa Clara County or where otherwise appropriate in the Federal District Court for the Northern District of California located in San Jose, California, having proper jurisdiction. There is no express or implied agreement between the parties to mediate and/or arbitrate in any forum any matter arising under this Contract.

The Contractor is hereby advised that these contract documents, including the Contractor's Proposal, are subject to the California State Public Records Act and become documents available to the general public.

In the event that a particular City public work contract is funded or required to be approved in whole or in part by the state or federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, such provisions to the extent that it is inconsistent shall not apply to said City public works contract.

7-1.23 Final Guarantee. - Unless otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final acceptance of the contract.

If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Engineer, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, promptly upon receipt of notice from the Engineer, and without expense to the City, (1) place in satisfactory condition in every particular all of such guaranteed work, correcting all defects therein; (2) make good all damage to the structure, site or work, or equipment or contents thereof, which, in the opinion of the Engineer, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and (3) make good any work or material, or the equipment and contents of said structures, site or work disturbed in fulfilling any such guarantee. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the City may have the defects corrected and the Contractor and the Contractor's surety shall be liable for all expense incurred.

7-1.24 Legal Address of Contractor. - Both the address given in the proposal and the Contractor's office in the vicinity of the work are hereby designated as places to either of which drawings, samples, notices, letters or other articles or communications to the Contractor may be mailed or delivered. The delivery at either of these places of any such thing from the City or its agents to the Contractor shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of such delivery. The address set forth in the proposal may be changed at any time by notice in writing from the Contractor to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawings, sample, notice, letter or other article or communication to or upon the Contractor personally.

7-1.25 Material Storage. - The Contractor shall store materials only within the work limit and Material Storage Areas designated in the plans. Should these areas prove inadequate, the Contractor shall make arrangements for and pay all fees in connection with the use of property other than the site for storage of materials or other purpose.

7-1.26 Waiver by the City. - The Contractor hereby agrees that waiver by the City of any breach or violation or any term or condition of this contract agreement shall not be deemed to be a waiver or any other term or condition

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

contained herein or a waiver of any subsequent breach or violation of the same term or condition of the contract. Payment for or acceptance by City of any work or services by Contractor performed under this contract shall not be deemed to be a waiver of any term or condition of this contract even if at the time of such payment or acceptance the City was aware of the Contractor's failure to comply with any term or condition of the contract.

7-1.27 Archeological and Paleontological Rights. - Notwithstanding any other provisions of this contract, in the event any archeological or paleontological objects within the project are discovered during the course of the work, the Contractor shall halt the work within the area affected, and the City shall have and retain all right, title and interest to such objects and shall have the further right, during the course of the contract, to examine or cause to have examined, the site of the work for any such objects and to perform or have performed archeological or paleontological excavations and all other related work to explore for, discover, recover and remove such objects from the site of the work.

In the event the work of archeological or paleontological examination and related work delays the Contractor's work, the Contractor shall be entitled to an extension of time to complete the work equal to the number of days thus delayed. Any such delays will be considered right-of-way delays within the meaning of Section 8-1.09, "Right of Way Delays", and compensation for such delay will be determined in accordance with said Section 8-1.09. The Contractor shall be entitled to no other compensation for any Archeological and Paleontological delays.

7-1.28 Emergencies. - In an emergency affecting the safety of persons or property the Contractor shall act reasonably to prevent threatened damage, injury or loss. The Contractor shall immediately notify the City in writing of such actions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Section 4-1.03, "Changes."

7-1.29 Integration Clause. - The contract, including these general and any special or technical specifications as defined herein, constitutes the entire agreement between the parties. There are no prior or contemporaneous oral agreements between the parties not set forth in the contract. Any modification to the contract or these specifications must be in writing in order to be effective and binding on the parties to the contract.

END OF SECTION